



HUMAN RIGHTS  
COMMISSION

# Human Rights in Prison: the ACT experience

Dr Helen Watchirs

Human Rights & Discrimination Commissioner

*Second Annual Alcohol & Other Drug Sector*

*Conference, National Library Canberra*

24 June 2008

# Human Rights Commission: Mandate

- promote understanding, acceptance & compliance with the *Human Rights Act 2004*, *Human Rights Commission Act 2005* & *Discrimination Act 1991*
- subsection 41(1) review/report on effect of laws to Attorney-General, eg HR Audits of Quamby (2005) & adult remand centres, BRC, STRC, PDC (2007). Assess legal framework, policies & procedures
- Context: focus on detainees, but recognise potential human rights breaches against staff, & crimes perpetrated against victims
- Resolve HR systemic problems in Corrections - not transfer to new prison Alexander Maconochie Centre (AMC)
- No complaints function (cf discrimination), but inspection power under *Corrections Management Act 2007*

# Philosophical context

Human rights law very developed - area where government has most control over an individual. Nelson Mandela (27 years Robben Island):

‘It is said that no one truly knows a nation until one has been inside the jails. A nation should not be judged by how it treats its highest citizens, but its lowest’ (Long Walk to Freedom, 1994).

- Rights-based approach good public policy – participation of people affected, fairness, non-discrimination, responsiveness, transparency and accountability
- WHO Europe and UK Prison Inspectorate ‘Healthy Prison’ concept – prisoners are held in safety; they are treated with respect and dignity as human beings; they are encouraged to improve themselves and given the opportunity to engage in purposeful activity; and they are enabled to maintain contact with their family and prepare for release, and thereby reduce the likelihood of reoffending.

# Relevant UN Standards

- International Covenant on Civil & Political Rights (**ICCPR**) – rights to life, humane treatment in detention
- International Covenant on Economic, Social and Cultural Rights (**ICESCR**) – right to the highest attainable standard of physical & mental health
- UN Convention Against Torture & Other Cruel, Inhuman & Degrading Treatment & Punishment (CAT)
- United Nations **Basic Principles** for the Treatment of Prisoners – P9 ‘prisoners shall have access to the health services in the country without discrimination on the grounds of their legal situation’.
- United Nations **Body of Principles** for the Protection of All Persons under any form of Detention or Imprisonment
- **Standard Minimum Rules** for the Treatment of Prisoners

# Human rights framework in prison

- Closed community (out of sight/mind) - open to abuse as vulnerable communities, eg indigenous.
- ACT half national average rate of incarceration, but Victoria lower.
- Lower: education, socio-economic status; & higher: incidence of mental illness, unemployment, unstable housing, health problems, alcohol & drug use and smoking
- Government's duty of care to ensure that prisoners are not abused by other prisoners or staff.
- Methadone maintenance, but ban on alcohol - products, eg sugar & yeast
- Legitimate restrictions on rights - liberty, privacy, freedoms of movement, assembly/expression, but **not all rights**, eg dignity.
- Rights (not privileges): food, water, clothing, hygiene, accommodation, bedding, open air, exercise, lawyer, health services, education/training services, communication (eg telephone, mail, news)
- Focus on rehabilitation - vocational education/training and family contact prepares prisoners for life after release. Joined up services needed.

# Human Rights Act 2004

- From 1 July 2004 laws to be interpreted consistently with human rights
- From 1 January 2009 ‘public authorities’ are required to act and make decisions consistently with human rights. Right of action to ACT Supreme Court for violations – wide remedies, eg declarations, but not compensation generally.
- Section 10: ‘(1) No-one may be tortured or treated or punished in a cruel, inhuman or degrading way.  
(2) No-one may be subjected to medical or scientific experimentation or treatment without his or her free consent.’
- Section 19: ‘(1) Anyone deprived of liberty must be treated with humanity and with respect for the inherent dignity of the human person.  
(2) An accused person must be segregated from convicted people except in exceptional circumstances’  
(2) An accused person must be treated in a way that is appropriate for a person who has not been convicted
- Subsection 20(1) An accused child must be segregated from accused adults.
- Subsection 22(1) ‘Everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.
- Others – s.8 equality, s.11 family, s.12 privacy, s.14 religion/belief, s.15 association, s,16 expression and information, s.18 liberty and security of person, .s.26 freedom from forced work, s. 28 minority cultures/languages

# Human Rights design

- More humane conditions at AMC for 160 detainees (cf BRC & STRC – 112 inmates, of whom 52 were sentenced, but NSW prisons full)
- Required to provide proper physical care, eg natural light, air quality and temperature, cell size and sanitation
- Half of accommodation ‘cottage’ style with emphasis on living skills (eg women and low security men) – some cells (sentenced and remand)
- Campus style – Medical Centre, Education and Programs, Admissions, Visits and Transitional Release buildings
- Normalised environment - pleasant outlook & open design
- Design rooms for mothers with infants, and conjugal visits (eg Victoria, Denmark, Sweden, Spain and Netherlands)
- Royal Commission into Aboriginal Deaths in Custody recommendations incorporated (eg buddy cells, no hanging points)

# HR Audit Recommendations

1. Urgent matters – overcrowding; mental health care; time-out of cells (many ‘lockdowns’ in 2006/07); and organised activities
2. Humane treatment – cells; searches (eg strip – half body), drug testing; welfare; education; work; clothing; hygiene; contact; legal advice; media and library; information about rights
3. **Health care** – services; infection control and harm minimisation; general health (equivalence, allied health, dentistry, external consults and hospitals, medical records); limits on use of restraints in hospitals; prisoners at risk
4. Oversight - monitoring
5. Systemic discrimination – sensitivity to special needs of women & minorities; indigenous people; culturally and linguistically diverse populations; interpreters; cultural activities; protection detainees; religion; food
6. Corrections Culture – training de-escalation & anti-bullying, records
7. Monitoring custody rates – ATSI, research PDC, review fine default

# Humane treatment recommendations

- Shared cells assessment criteria
- Cell searches pat-down, & strip- reasonable suspicion
- Drug testing more dignity if conducted on half body
- Education: assess for literacy & numeracy; and drug & alcohol program
- Work- meaningful offered
- Hygienic cells on arrival
- Visits
- Legal advice messages passed on same day
- Media reasonable access
- Library
- Clothing
- Information about rights etc – written, verbal & visual

# Health care and services

- contraband drugs expected and found in ACT - NSW Research: 63.3% of males and 74.5% of females abuse or are dependent on drugs or alcohol. Also 78.2% of males and 90.1% of females have mental disorders
- infection control and harm minimisation eg HIV.
- Hepatitis C high prevalence in closed population – general community 2% , but male inmates 35-40% and female inmates 55-56%
- duty of care to detainees – NSW negligence class action by prisoners in mid-1990s about access to condoms led to reform
- returned to community as average short length of stay (eg 7 months)
- NSPs – also opportunity to include safer sex education & means (eg condoms, dental dams)
- security and health not mutually exclusive, but limits on use of restraints (eg not use handcuffs on hospital beds).
- New AMC ban on smoking indoors – detainees given free lozenges in cells, but cottages have designated areas. About 80% of prisoners smoke (men 78% & women 83%) – ATSI figures may be higher. NSW nicotine patches.

# Audit - Pilot Needle Syringe Program

- harm minimisation approach protects the rights to life & health;
- Drugs and equipment have already been found in the AMC;
- injection of drugs usually correlates with a higher levels of addiction;
- risk of transmission of blood-borne diseases such as HIV/AIDS and Hepatitis C increases when detainees return to the community;
- ‘equivalence’ - ACT community-based needle & syringe programs;
- numerous studies have demonstrated the efficacy of exchanges in communities around the world, as well as prisons in some countries;
- Evaluations of NSPs show reduction of needle sharing and infections, and do not increase drug consumption or demand;
- Tailor to suit individual prison, eg Spain excludes violent prisoners;
- some ACT Corrective Services staff oppose NEP due to OHS concerns (cf research findings), but Geoffrey Pearce’s death in 1997 LB 1990;
- to deny protection against disease transmission in such a high-prevalence and closed population in prison may be viewed as inhumane.

# Infection control and harm minimisation recommendations

- A pilot program for a needle and syringe program with provision for safe disposal of needles should be developed for the AMC. Consideration could also be given to establishing a safe injecting room (medically supervised injecting facility).
- Detainees must regularly be provided with information about the availability of condoms and other safeguards, as well as safe sex practices, in order to prevent sexually transmitted infections and diseases such as HIV/AIDS and Hepatitis B and C
- In addition to installing a condom-dispensing machine, adequate means for disposing of condoms should be provided. A dispensing machine for latex gloves and dental dams should be provided for women at the AMC, along with adequate means of disposing of them. In the meantime, they should be available from health staff at the remand centres.
- **Sources - International Guidelines on HIV/AIDS & Human Rights (1996)** UNAIDS & OHCHR – G4 ‘prison authorities should provide prisoners with access to the means of prevention (condoms, bleach & clean injecting equipment)’ and **WHO Guidelines on HIV Infection & AIDS in Prisons** – A(1) ‘all prisoners have the right to receive health care, including preventative measures, equivalent to that available in the community without discrimination...’ and P24 ‘consideration should be given to providing clean injecting equipment during detention & on release to prisoners who request this’.

# Government Response to Audit

Human Rights Audit – 98 constructive recommendations in 7 key areas. Govt formal response to recommendations:

- agreed with 70;
- agreed in principle with 10;
- agreed in part with 4;
- noted 10, including NSP - ‘ACT Government policy does not support a needle & syringe exchange at this time. It is an ongoing matter for policy consideration’ (18 months after AMC in operation from June 2009, ie end 2010); and
- not agree with 4 - handcuffs in hospital beds; women staff guarding women prisoners at night, use of remandees’ own clothing & information on induction

# Optional Protocol to UN Torture Convention

Federal government signed OP to UN Convention Against Torture, & Other Cruel, Inhuman or Degrading Treatment or Punishment in May 2009 – ratification next. Need National Coordinating mechanism eg Australian HRC

Humane detention required in all facilities (eg prisons & psychiatric units) in all jurisdictions. Several mechanisms: communications or complaints; and inspections/monitoring – UN and domestic

Many detailed international and local resources:

- *Human Rights and Prisons: A Manual on Human Rights Training for Prison Officials*, UN High Commissioner for Human Rights (2003)
- *A Human Rights Approach to Prison Management*, International Centre for Prison Studies (2002)
- European Committee Against Torture findings
- UN expert Committees General Comments eg CAT and HRC

# The Future

- AMC opportunity & investment - unique opportunity for human rights compliant prison with focus on rehabilitation treat people with respect & dignity
- Synergy HR & corrections best practices - integrate, not tack on
- NSP partnership experts (eg public health, drug & alcohol), community & government
- Development of human rights culture long term, overnight – process of continuous improvement & benefit all
- Federal Ministerial Advisory Council (MACBBVS) role – encouraging inclusion of human rights expert
- UNAIDS 2009 World AIDS Day theme ‘Human Rights’
- Victorian *Charter of Rights and Responsibilities 2006* – Tasmania next? ACT review of first 5 years *HR Act 2004*
- Federal consultation on Bill of Rights Public Hearings: 1-3 July 2009 Parliament House. Report in September 2009.